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House Engrossed
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JANICE K. BREWER
SECRETARY OF STATE

CHAPTER 51

HOUSE BILL 2191

AN ACT

AMENDING SECTION 3-604, ARIZONA REVISED STATUTES; REPEALING SECTION 3-666, ARIZONA REVISED STATUTES; AMENDING SECTIONS 36-136, 36-183.02 AND 36-901, ARIZONA REVISED STATUTES; RELATING TO HEALTH INSPECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 3-604, Arizona Revised Statutes, is amended to read:

3-604. Dairy inspectors; duties; powers; local health department officers

A. Special dairy inspectors employed by the department shall supervise, inspect, weigh and test dairy products produced or manufactured for human consumption and shall perform such other duties and possess such other powers as may be prescribed by the associate director authorized by this article.

B. The director may assign personnel ~~from the office of inspections~~ to perform the inspection-related activities prescribed by this chapter under the direction of the associate director.

C. In addition to inspectors employed or assigned under ~~the provisions of this section~~, the enforcing officers of a ~~city or county~~ health department, COUNTY ENVIRONMENTAL HEALTH DEPARTMENT OR PUBLIC HEALTH SERVICES DISTRICT under the charge and direction of a ~~qualified health officer shall~~ OR ENVIRONMENTAL HEALTH OFFICER MAY be deemed special dairy inspectors in the city or county, and a milk supply inspected and approved by these inspectors shall be deemed to comply with the provisions of this article.

Sec. 2. Repeal

Section 3-666, Arizona Revised Statutes, is repealed.

Sec. 3. Section 36-136, Arizona Revised Statutes, is amended to read:

36-136. Powers and duties of director; compensation of personnel

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove ~~such personnel considered~~ AS necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.

6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and

1 survey any source and means of water supply, sewage disposal plant, sewerage
2 system, prison, public or private place of detention, asylum, hospital,
3 school, public building, private institution, factory, workshop, tenement,
4 public washroom, public rest room, public toilet and toilet facility, public
5 eating room and restaurant, dairy, milk plant or food manufacturing or
6 processing plant, and any premises in which the director has reason to
7 believe there exists a violation of any health law or rule of the state that
8 the director has the duty to administer.

9 7. Prepare sanitary and public health rules.

10 8. Perform other duties prescribed by law.

11 B. If the director has reasonable cause to believe that there exists
12 a violation of any health law or rule of the state, the director may inspect
13 any person or property in transportation through the state, and any car,
14 boat, train, trailer, airplane or other vehicle in which ~~such~~ THAT person or
15 property is transported, and may enforce detention or disinfection as
16 reasonably necessary for the public health if there exists a violation of any
17 health law or rule.

18 C. The director may deputize, in writing, any qualified officer or
19 employee in the department to do or perform on the director's behalf any act
20 the director is by law empowered to do or charged with the responsibility of
21 doing.

22 D. The director may delegate to a local health department, COUNTY
23 ENVIRONMENTAL DEPARTMENT or public health services district any functions,
24 powers or duties that the director believes can be competently, efficiently
25 and properly performed by the LOCAL health department, COUNTY ENVIRONMENTAL
26 DEPARTMENT or public health services district if:

27 1. The director or superintendent of the local health agency,
28 ENVIRONMENTAL AGENCY or public health services district is willing to accept
29 the delegation and agrees to perform or exercise the functions, powers and
30 duties conferred in accordance with the standards of performance established
31 by the director.

32 2. Monies appropriated or otherwise made available to the department
33 for distribution to or division among counties or public health services
34 districts for local health work may be allocated or reallocated in a manner
35 designed to assure the accomplishment of recognized local public health
36 activities and delegated functions, powers and duties in accordance with
37 applicable standards of performance. Whenever in the director's opinion
38 there is cause, the director may terminate all or a part of any such
39 delegation and may reallocate all or a part of any funds that may have been
40 conditioned on the further performance of the functions, powers or duties
41 conferred.

42 E. The compensation of all personnel shall be as determined pursuant
43 to section 38-611.

44 F. The director may make and amend rules necessary for the proper
45 administration and enforcement of the laws relating to the public health.

1 G. Notwithstanding subsection H, paragraph 1 of this section, the
2 director may define and prescribe emergency measures for detecting,
3 reporting, preventing and controlling communicable or infectious diseases or
4 conditions if the director has reasonable cause to believe that a serious
5 threat to public health and welfare exists. Emergency measures are effective
6 for no longer than eighteen months.

7 H. The director shall, by rule:

8 1. Define and prescribe reasonably necessary measures for detecting,
9 reporting, preventing and controlling communicable and preventable diseases.
10 The rules shall declare certain diseases reportable. The rules shall
11 prescribe measures, including isolation or quarantine, reasonably required
12 to prevent the occurrence of, or to seek early detection and alleviation of,
13 disability, insofar as possible, from communicable or preventable diseases.
14 The rules shall include reasonably necessary measures to control animal
15 diseases transmittable to humans.

16 2. Define and prescribe reasonably necessary measures, in addition to
17 those prescribed by law, regarding the preparation, embalming, cremation,
18 interment, disinterment and transportation of dead human bodies and the
19 conduct of funerals, relating to and restricted to communicable diseases and
20 regarding the removal, transportation, cremation, interment or disinterment
21 of any dead human body.

22 3. Define and prescribe reasonably necessary procedures not
23 inconsistent with law in regard to the use and accessibility of vital
24 records, delayed birth registration and the completion, change and amendment
25 of vital records.

26 4. Except as relating to the beneficial use of wildlife meat by public
27 institutions and charitable organizations pursuant to title 17, prescribe
28 reasonably necessary measures to assure that all food OR DRINK, including
29 meat and meat products AND MILK AND MILK PRODUCTS sold at the retail level,
30 ~~or drink, other than milk and milk products, sold or distributed~~ PROVIDED for
31 human consumption is free from unwholesome, poisonous or other foreign
32 substances and filth, insects or disease-causing organisms. The rules shall
33 prescribe reasonably necessary measures governing the production, processing,
34 labeling, storing, handling, serving and transportation of such food and
35 drink. The rules shall prescribe minimum standards for the sanitary
36 facilities and conditions that shall be maintained ~~in any plant, other than~~
37 ~~a meat packing plant, slaughterhouse or wholesale meat processing plant, and~~
38 in any warehouse, restaurant or other premises, and ~~in~~ EXCEPT A MEAT PACKING
39 PLANT, SLAUGHTERHOUSE, WHOLESALE MEAT PROCESSING PLANT, DAIRY PRODUCT
40 MANUFACTURING PLANT OR TRADE PRODUCT MANUFACTURING PLANT. THE RULES SHALL
41 PRESCRIBE MINIMUM STANDARDS FOR any truck or other vehicle in which food or
42 drink is produced, processed, stored, handled, served or transported. The
43 rules shall provide for the inspection and licensing of premises and vehicles
44 so used, and for abatement as public nuisances of any premises or vehicles
45 that do not comply with the rules and minimum standards.

1 5. Prescribe reasonably necessary measures to assure that all meat and
2 meat products for human consumption handled at the retail level are delivered
3 in a manner and from sources approved by the Arizona department of
4 agriculture and are free from unwholesome, poisonous or other foreign
5 substances and filth, insects or disease-causing organisms. The rules shall
6 prescribe standards for sanitary facilities to be used in identity, storage,
7 handling and sale of all meat and meat products sold at the retail level.

8 6. Prescribe reasonably necessary measures regarding production,
9 processing, labeling, handling, serving and transportation of bottled water
10 to assure that all bottled drinking water distributed for human consumption
11 is free from unwholesome, poisonous, deleterious or other foreign substances
12 and filth or disease-causing organisms. The rules shall prescribe minimum
13 standards for the sanitary facilities and conditions that shall be maintained
14 at any source of water, bottling plant and truck or vehicle in which bottled
15 water is produced, processed, stored or transported and shall provide for
16 inspection and certification of bottled drinking water sources, plants,
17 processes and transportation and for abatement as a public nuisance of any
18 water supply, label, premises, equipment, process or vehicle that does not
19 comply with the minimum standards. The rules shall prescribe minimum
20 standards for bacteriological, physical and chemical quality for bottled
21 water and for the submission of samples at intervals prescribed in the
22 standards.

23 7. Define and prescribe reasonably necessary measures governing ice
24 production, handling, storing and distribution to assure that all ice sold
25 or distributed for human consumption or for the preservation or storage of
26 food for human consumption is free from unwholesome, poisonous, deleterious
27 or other foreign substances and filth or disease-causing organisms. The
28 rules shall prescribe minimum standards for the sanitary facilities and
29 conditions and the quality of ice that shall be maintained at any ice plant,
30 storage and truck or vehicle in which ice is produced, stored, handled or
31 transported and shall provide for inspection and licensing of the premises
32 and vehicles, and for abatement as public nuisances of ice, premises,
33 equipment, processes or vehicles that do not comply with the minimum
34 standards.

35 8. Define and prescribe reasonably necessary measures concerning
36 sewage and excreta disposal, garbage and trash collection, storage and
37 disposal, and water supply for recreational and summer camps, campgrounds,
38 motels, tourist courts, trailer coach parks and hotels. The rules shall
39 prescribe minimum standards for preparation of food in community kitchens,
40 adequacy of excreta disposal, garbage and trash collection, storage and
41 disposal and water supply for recreational and summer camps, campgrounds,
42 motels, tourist courts, trailer coach parks and hotels and shall provide for
43 inspection of such premises and for abatement as public nuisances of any
44 premises or facilities that do not comply with the rules.

1 9. Define and prescribe reasonably necessary measures concerning the
2 sewage and excreta disposal, garbage and trash collection, storage and
3 disposal, water supply and food preparation of all public schools. The rules
4 shall prescribe minimum standards for sanitary conditions that shall be
5 maintained in any public school and shall provide for inspection of such
6 premises and facilities and for abatement as public nuisances of any premises
7 that do not comply with the minimum standards.

8 10. Prescribe reasonably necessary measures to prevent pollution of
9 water used in public or semipublic swimming pools and bathing places and to
10 prevent deleterious health conditions at such places. The rules shall
11 prescribe minimum standards for sanitary conditions that shall be maintained
12 at any public or semipublic swimming pool or bathing place and shall provide
13 for inspection of such premises and for abatement as public nuisances of any
14 premises and facilities that do not comply with the minimum standards. The
15 rules shall be developed in cooperation with the director of the department
16 of environmental quality and shall be consistent with the rules adopted by
17 the director of the department of environmental quality pursuant to section
18 49-104, subsection B, paragraph 12.

19 11. Prescribe reasonably necessary measures to keep confidential
20 information relating to diagnostic findings and treatment of patients, as
21 well as information relating to contacts, suspects and associates of
22 communicable disease patients. In no event shall such confidential
23 information be made available for political or commercial purposes.

24 12. Prescribe reasonably necessary measures regarding human
25 immunodeficiency virus testing as a means to control the transmission of that
26 virus, including the designation of anonymous test sites as dictated by
27 current epidemiologic and scientific evidence.

28 I. The rules adopted under the authority conferred by this section
29 shall be observed throughout the state and shall be enforced by each local
30 board of health or public health services district, but this section does not
31 limit the right of any local board of health or county board of supervisors
32 to adopt ordinances and rules as authorized by law within its jurisdiction,
33 provided that the ordinances and rules do not conflict with state law and are
34 equal to or more restrictive than the rules of the director.

35 J. The powers and duties prescribed by this section do not apply in
36 instances in which regulatory powers and duties relating to public health are
37 vested by the legislature in any other state board, commission, agency or
38 instrumentality, except that with regard to the regulation of meat and meat
39 products, the department of health services and the Arizona department of
40 agriculture within the area delegated to each shall adopt rules that are not
41 in conflict.

42 K. The director, in establishing fees authorized by this section,
43 shall comply with title 41, chapter 6. The department shall not set a fee
44 at more than the department's cost of providing the service for which the fee

1 is charged. State agencies are exempt from all fees imposed pursuant to this
2 section.

3 L. After consultation with the state superintendent of public
4 instruction, the director shall prescribe the criteria the department shall
5 use in deciding whether or not to notify a local school district that a pupil
6 in the district has tested positive for the human immunodeficiency virus
7 antibody. The director shall prescribe the procedure by which the department
8 shall notify a school district if, pursuant to these criteria, the department
9 determines that notification is warranted in a particular situation. This
10 procedure shall include a requirement that before notification the department
11 shall determine to its satisfaction that the district has an appropriate
12 policy relating to nondiscrimination of the infected pupil and
13 confidentiality of test results and that proper educational counseling has
14 been or will be provided to staff and pupils.

15 Sec. 4. Section 36-183.02, Arizona Revised Statutes, is amended to
16 read:

17 36-183.02. Sanitary regulations; notice

18 A. Each county shall:

19 1. investigate all nuisances, sources of filth and causes of sickness
20 and make regulations necessary for the public health and safety of the
21 inhabitants.

22 ~~2. Provide by regulation for periodic inspection and licensing of~~
23 ~~retailers and wholesalers who convert a pasteurized mix into frozen dessert,~~
24 ~~as defined in section 3-601, to assure that the frozen dessert is free from~~
25 ~~unwholesome, poisonous and other foreign substances and disease-causing~~
26 ~~organisms. The county may assess a fee to cover the costs of inspecting and~~
27 ~~licensing.~~

28 B. The county shall give notice of all general orders and regulations
29 by publishing them in a newspaper published within the jurisdiction of the
30 county. If there is no such newspaper, the county shall post the orders and
31 regulations in five public places within the jurisdiction of the county and
32 this constitutes legal notice to all persons.

33 Sec. 5. Section 36-901, Arizona Revised Statutes, is amended to read:

34 36-901. Definitions

35 In this article, unless the context otherwise requires:

36 1. "Advertisement" means all representations disseminated in any
37 manner or by any means other than by labeling for the purpose of inducing,
38 or which are likely to induce, directly or indirectly, the purchase of food.

39 2. "Color additive" means a material which THAT both:

40 (a) Is a dye, pigment, or other substance made by a process of
41 synthesis or similar artifice, or extracted, isolated, or otherwise derived,
42 with or without intermediate or final change of identity from a vegetable,
43 animal, mineral, or other source.

44 (b) When added or applied to a food is capable, alone or through
45 reaction with other substance, of imparting color thereto TO THAT FOOD,

1 except that ~~such term~~ COLOR ADDITIVE does not include any material which THAT
2 has been exempted under the federal act. The term "color" includes, but is
3 not limited to, black, white and intermediate grays. This paragraph shall
4 not be construed to apply to any pesticide chemical, soil or plant nutrient,
5 or other agricultural chemical solely because of its effect in aiding,
6 retarding or otherwise affecting, directly or indirectly, the growth or other
7 natural physiological process of produce of the soil, and thereby affecting
8 its color, whether before or after harvest.

9 3. "Contaminated with filth" applies to any food not securely
10 protected from dust, from dirt, and, as far as may be necessary by all
11 reasonable means, from all foreign or injurious contaminations.

12 4. "Director" means the director of the department of health services.

13 5. "Federal act" means the federal food, drug and cosmetic act, as
14 amended (21 U.S.C. UNITED STATES CODE SECTION 301 et seq.).

15 6. "Food" or "article" means:

16 (a) Articles used for food or drink for man or animals, ~~except those~~
17 ~~articles included in title 3, chapters 4 and 5.~~

18 (b) Chewing gum.

19 (c) Articles used for components of any such article.

20 7. "Food additive" means any substance, the intended use of which
21 results or may be reasonably expected to result, directly or indirectly, in
22 its becoming a component of or otherwise affecting the characteristics of any
23 food, including any substance intended for use in producing, manufacturing,
24 packing, processing, preparing, treating, packaging, transporting or holding
25 food, and including any source of radiation intended for any such use if such
26 THE substance is not generally recognized among experts qualified by
27 scientific training and experience to evaluate its safety as having been
28 adequately shown through scientific procedures, or in the case of a substance
29 used in a food prior to January 1, 1958 through either scientific procedures
30 or experience based on common use in food, to be safe under the conditions
31 of its intended use. ~~Such term~~ FOOD ADDITIVE does not include:

32 (a) A pesticide chemical in or on a raw agricultural commodity.

33 (b) A pesticide chemical to the extent that it is intended for use or
34 is used in the production, storage or transportation of any raw agricultural
35 commodity.

36 (c) A color additive.

37 (d) Any substance used in accordance with a sanction or approval
38 granted pursuant to laws or regulations administered by the federal food and
39 drug administration.

40 8. "Immediate container" does not include package liners.

41 9. "Label" or "labeling" means a display of written, printed or
42 graphic matter upon the immediate container or wrapper of an article or
43 accompanying ~~such~~ THAT article.

44 10. "Perishable food" means any food ~~which~~ THAT may spoil or otherwise
45 become unfit for human consumption because of its nature, type or physical

1 condition, including fresh and processed meats, poultry, seafood, dairy
2 products, bakery products, eggs in the shell, fresh fruits and vegetables and
3 foods ~~which~~ THAT have been packaged, refrigerated or frozen.

4 11. "Pesticide chemical" means any substance ~~which~~ THAT alone, in
5 chemical combination or in formulation with one or more other substances is
6 an "economic poison" within the meaning of the federal insecticide, fungicide
7 and rodenticide act (7 ~~U.S.C.~~ UNITED STATES CODE sections 135-135k) and ~~which~~
8 THAT is used in the production, storage or transportation of raw agricultural
9 commodities.

10 12. "Prepared food" means any food commercially processed and prepared
11 for human consumption.

12 13. "Raw agricultural commodity" means any food in its raw or natural
13 state, including, but not limited to, all fruits that are washed, colored or
14 otherwise treated in their unpeeled natural form prior to marketing.

15 14. "Special inspection warrant" means an order in writing issued in
16 the name of the state of Arizona, signed by a magistrate and directed to the
17 director or his designee, authorizing him to enter into or upon any public
18 or private property to make an inspection authorized by law.

APPROVED BY THE GOVERNOR APRIL 7, 2004.

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